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Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1899

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES JAMES MENNE, JR.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF
THE STATE OF LOUISIANA

MAY IT PLEASE THE COURT:

Petitioners, the State of Louisiana, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered on January 28, 1980, rehearing denied March 3, 1980.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Louisiana, reversing the trial judge's acceptance of a plea of guilty to

the crime of second degree murder, is found in the Appendix hereto and is reported at 380 So.2d 14 (1980).

JURISDICTION

The judgment of the Supreme Court of Louisiana, printed in the Appendix hereto, was entered on January 28, 1980, rehearing denied March 3, 1980.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the self-incrimination and due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the right to counsel clause of the Sixth Amendment to the United States Constitution. See also Louisiana Constitution (1974), Article I, Section 13.

QUESTIONS PRESENTED

I. Whether the court below applied correct constitutional standards in holding a confession to be involuntary under the Fifth Amendment in the absence of any evidence of actual coercion?

II. Whether a spontaneous inculpatory statement by the respondent need be suppressed.

III. Whether defendant who voluntarily accepts police invitation to police headquarters is in custody.

STATEMENT OF THE CASE

On or about June 1, 1977 Wesley D. Morgan was found shot to death in his automobile. A gun was found in the deceased's car at the time, and it was subsequently determined to be the weapon used in the killing of Wesley Morgan. (Tr. Oct. 13, 1978-p. 22). Later investigation revealed that the defendant, Charles Menne, was at least at one time, the owner of the gun. (Tr. Oct. 13, 1978, p. 22). On or about August 24, 1977 the defendant was contacted by the police and asked to come to the station in reference to the investigation of the murder of Wesley Morgan. The defendant did go to the police station of his own accord. (Tr. Oct. 13, 1978, p. 23). The defendant was interviewed relative to the ownership of the gun, and at one point the defendant stated that he had sold it to the deceased, Wesley Morgan. (Tr. Oct. 13, 1978, p. 26). Arthur Thibodeaux of the Jefferson Parish Sheriff's Office, one of the officers present during the interview, told the defendant that he did not believe him. (Tr. Oct. 13, 1978). The defendant then stated, "You got me, I killed him." (Tr. Oct. 13, 1978, p. 26). The defendant was then advised of his rights, and he read a waiver form which he signed. He stated that he would give a statement in reference to the murder. (Tr. Oct. 13, 1978, p. 27). The statement given by the defendant was basically a full confession of the murder of Wesley Morgan. (Tr. Nov. 3, 1977, pp. 4-14).

An indictment was returned on October 7, 1977 charging the defendant with the first degree murder of Wesley D. Morgan on June 1, 1977. (Tr. p. 21).

On October 13, 1978 a lunacy hearing was held after which the defendant was found legally sane and mentally competent to assist counsel. (R. p. 17).

On January 15, 1979 the defendant appeared before Honorable Alvin Rudy Eason, Judge presiding, represented by Nolan Edwards, Esq., and Lawrence Genin, Esq. The prosecuting attorney was G. Thomas Porteous, Jr., Esq. The defendant waived his right to a trial by jury, after having been appraised of all his rights, and entered a plea of guilty to second degree murder, *reserving the right to appeal the court's ruling on the Motion to Suppress his confession.* The defendant, age 21, was sentenced to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence with credit for time served.

SUMMARY OF ARGUMENT

The defendant, age 20, pleaded guilty to the crime of Second Degree Murder of a 22-year-old man named Wesley D. Morgan. He gave, voluntarily, after being advised of his rights under *Miranda*, a written statement as to the specifics of his act including the disposal of the body after the shooting and the tying of an angle iron rim to it and dumping it in the Mississippi River.

Testimony as to defendant's invitation to cooperate with the police (which he readily agreed to do) indicates that police inquiries were made only to further leads as to actual ownership of the murder weapon that had been found. The gun was originally registered to the defendant who claimed he had sold it to the victim. It was solely on the point of who owned the gun that police were questioning the defendant, not even a suspect at that time, that the defendant blurted out "Okay you got me. I killed him." After that spontaneous utterance, the police recited the *Miranda* warnings to the defendant. The subsequent written confession taken from the defendant and the elaboration of how he killed the victim followed a written waiver of his rights that further advised the defendant of his earlier warnings under the *Miranda* edict.

There is no merit to the defendant's single Assignment of Error. *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 77 (1977).

ARGUMENT

REASONS FOR GRANTING THE WRIT

1. *The Fifth Amendment Privilege is Violated Only by Actual Official Coercion.*

In *Michigan v. Tucker*, 417 U.S. 433 (1974), this Court noted that the Court in *Miranda* acknowledged that it had gone beyond traditional voluntariness concepts.

> "The suggested safeguards were not intended to 'create a constitutional straightjacket,' *ibid.*, but rather to provide practical reinforcement for the right against compulsory self-incrimination." *Michigan v. Tucker*, at 444.

Oregon v. Mathiason, 429 U.S. 492 (1977), continued the implicit rejection of the "inherently coercive" premise. In *Mathiason*, this Court held that a parolee who came to the police station voluntarily, yet at the request of his parole officer, who was told that he was not under arrest, yet was told falsely that his fingerprints had been found at the scene of a burglary, and who then confessed, before being given the *Miranda* warnings, was not in custody for *Miranda* purposes.

This Court rejected the view that mere questioning at the station house constitutes a "coercive environment." *Mathiason*, at 495. This result differs substantially from the broad and darkly sinister picture of station house interrogation painted by the majority in *Miranda* (at 445-458). Even without the formal announcement of arrest, Mathiason was subject to the same type of experience the *Miranda* decision sought to protect him against, i.e., the "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." *Miranda*, at 445.

The State submits, therefore, that the premise that all police interrogation is inherently coercive has been

rejected and that, without such a premise, the Fifth Amendment's direct command against the *use* of compelled testimony does not operate to require automatic exclusion of statements obtained through police interrogation absent a showing of actual coercion independent of the fact of custodial interrogation itself. Indeed, it is questionable whether, with the rejection of *Miranda's* factual premise, there is any justification for extending the constitutional privilege to an extrajudicial setting at all.

There have been numerous cases in which the presence of a suspect at a police station was clearly non-custodial.

In *Hicks v. United States*, 382 F.2d 158 (D.C. Cir. 1967) it was held that statements given in response to interrogation at police headquarters were not custodial when defendant voluntarily went to headquarters upon request.

Under proper circumstances Courts have accepted the proposition that someone can legitimately be said to have been invited to a police station; *Thompson v. United States*, 382 F.2d 390 (9th Cir. 1967); *United States v. Cortez*, 425 F.2d 453 (6th Cir. 1970); *United States v. Bird*, 293 F.Supp. 1265 (Mont. 1968). See *United States v. Freije*, 408 F.2d 100 (1st Cir. 1969) (officer told defendant he would meet with him wherever defendant preferred). *State v. Williams*, 235 A.2d 684 (N.J. App. 1967) aff'd. 255 A.2d 817 (N.J. 1968) (several persons brought in for

routine inquiry: statement also volunteered). An interview conducted in a non-custodial setting during normal business hours is more likely to be found non-custodial than one which is conducted at an odd hour of the night. The absence of physical restraint has led several courts to the conclusion that the defendant was not under arrest or in custody. *United States v. Fiorillo*, 376 F.2d 180 (2d Cir. 1967).

Finally, the demeanor of the officer may be significant. The higher the level of courtesy and deference the suspect — the more likely a court is to find that the suspect did not reasonably believe he was in custody. See *State v. Bode*, 261 A.2d 396 (N.J. App. 1970).

2. *Volunteered Statements are not Violations of Miranda*

In *Miranda* the Court stated that "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." 384 U.S. at 478. See Anno. 31 A.L.R.; 3d 656. A volunteered statement is one that is *not* made in response to questioning by an officer. The relative simplicity of this concept makes the determination of whether a statement is volunteered a much easier issue than the question of custody. See *Terry v. State*, 241 So.2d 137 (Ala. App. 1970) (holding that motions to suppress must allege the existence of questioning by police).

Volunteered statements also occur during interrogation when the suspect makes a damaging admission that is not responsive to the officer's question. For example, an officer may ask "What is your name?" and the response may be "I'm sorry I killed her." See *Parson v. United States,* 387 F.2d 944 (10th Cir. 1968). *People v. Merlo,* 179 N.W.2d 222 (Mich. App. 1970) (defendant blurts out confession of murder to officer in another state who was questioning him about a different crime and who was unaware of the murder); *DeHart v. State,* 468 S.W.2d 435 (Texas 1971) ("Do you know your father is dead? I know. I only wish it had been my mother.").

The police have no duty to interrupt a volunteered statement in order to warn a suspect of his rights. *Miranda v. Arizona,* 384 U.S. at 478. Finally, a volunteered statement is admissible regardless of when it was made, i.e., while in custody, after indictment, after counsel is retained, etc. *People v. Sunday,* 79 Cal.Rptr. 752 (Cal. App. 1969).

3. *Threshold and Clarifying Questions are not Violations of Miranda*

The problem of threshold questioning arises because most volunteered admissions are not very detailed. In *People v. Savage,* 242 N.E.2d 446 (Ill. App. 1968) a man walked into a police station and said "I done it. I done it. Arrest me. Arrest me." Naturally the officer asked him what he did and when the man said he killed

his wife the officer asked him how and he replied, "With an axe, that's all I had." The Court held that this was "threshold questioning" and was permitted by *Miranda*. See also *United States v. Cruz*, 265 F.Supp. 15 (N.D. Texas 1967); *People v. Kaye*, 250 N.E.2d 329 (N.Y. 1969); *State v. Ferrari*, 460 P.2d 244 (N.M. 1969).

The rule is well stated in *People v. Sunday*, 76 Cal.Rep. 668 and 79 Cal.Rptr. 752 (Cal. App. 1969) where the defendant, who was in custody, initiated an interview with the police. His statement was largely a monologue but some routine questions were asked. The Court held that a statement is volunteered even if some questions are asked, as long as the questions are neutral, intended to clarify and are not designed to expand the scope of the statement the witness wants to make. Cf. *United States v. Hopkins*, 433 F.2d 1041 (5th Cir. 1970) (after warning and refusal to talk, defendant volunteered a statement and the officer asked clarifying questions — upheld as proper but denominated as "interrogation").

In the instant case, with all respect to Dennis, J., author of the opinion for the 4-3 majority, the very fact this Court admits "The evidence is sketchy . . .", and "The evidence before us does not reveal Menne's specific answers . . ." regarding the uncalled for, spontaneous blurting out of "You got me, I killed him!" indicates need for a closer look.

Curiously, never before has this Court used the "focus" test to determine custody. While Dennis, J. writes for the 4-3 majority that the Louisiana Supreme Court is using an "objective test," the basis for the decision is erroneously based on a misinterpretation of the obsolete "focus" test. In actuality, Menne's *"blurting out"* the confession "You got me, I killed him," was a spontaneous utterance that needed clarification. It was at that point, properly and timely, that he was given the necessary *Miranda* warnings.

4. *The Statement Was Obtained In Full Compliance With Miranda v. Arizona, 384 U.S. 436 (1966).*

This Court has never held that the making of a confession under circumstances precluding its use at trial precludes use of all later voluntary inculpatory statements. *United States v. Bayer,* 331 U.S. 532 (1947). The determinative factors relevant to the instant case are that the statement was spontaneous, was an expression of regret or, rather, a complete resignation to a nagging conscience and was not in any sense elicited by interrogation. Simply, "O.K., you got me. I killed him." The circumstances surrounding the statement at issue did not violate constitutional safeguards: there was no attempt to obtain information on the part of the police; therefore, no consideration of whether an effort to withhold the information would be futile is appropriate and the subsequent statement was not repetitious of the prior spontaneous confession.

Finally, as Justice Blanche states in his dissent in the instant case:

> "Persons not under an in-custody investigation are not entitled to a *Miranda* warning. Neither are persons who volunteer statements at a time when a criminal investigation has not focused on them. This opinion would require police to give *Miranda* warnings to everyone whom they merely question."

The State of Louisiana suggests that the Louisiana Supreme Court has applied the exclusionary rule far beyond that which is constitutionally required or contemplated by the rulings of this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE

I hereby certify three copies of the foregoing Petition for Writ of Certiorari have been sent to Nolan J. Edwards, Esq., P.O. Drawer 730, Crowley, Louisiana 70526; by placing them in the United States mail, postage prepaid this ____ day of May, 1980.

ABBOTT J. REEVES

APPENDIX

SUPREME COURT OF LOUISIANA

No. 65,130

STATE OF LOUISIANA

versus

CHARLES JAMES MENNE, JR.

Appeal from the Twenty-Fourth Judicial District Court, Parish of Jefferson, Honorable Alvin Rudy Eason, Judge.

Filed: Jan. 28, 1980

DENNIS, Justice.*

In our review of this criminal conviction we are called upon to decide whether a person who responds to a policeman's request that he come to the stationhouse for questioning must be advised of his constitutional rights when circumstances arise which create ambiguity as to whether he is any longer at liberty. We hold that under the Fifth Amendment and the Louisiana

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* The Honorable Jesse N. Stone, Jr. participated in this decision as an Associate Justice Ad Hoc.

Constitution, an officer must give constitutional warnings to a person under investigation whenever the circumstances reasonably indicate that the interogee has been deprived of his freedom in any significant way.

Accordingly, under the circumstances of this case — in which the defendant came to the police station for questioning at an officer's request, was not informed that there was no legal obligation that he comply, was subjected to questioning by two officers in a police interrogation room for approximately one hour, and was told by the officers that they thought he knew more than he had told about the murder they were investigating because he was the last person to possess the murder weapon before it was found in the victim's car — the defendant was detained or deprived of his freedom in a significant way, requiring that the officers advise him fully of his rights before continuing interrogation. Consequently, the confessions obtained from defendant without affording him this safeguard should have been suppressed. The judgment of the trial court denying defendant's motion to suppress and the guilty plea conviction induced by the erroneous ruling must be reversed.

Defendant, Charles James Menne, Jr., moved to suppress the use of his confession as evidence in his first degree murder prosecution. After a hearing the trial court refused to suppress the confession and Menne pleaded guilty to second degree murder, reserving his

right to appeal the unfavorable suppression ruling. See *State v. Crosby*, 338 So.2d 584 (La. 1976). Menne was sentenced to life imprisonment at hard labor, without parole, probation or suspension of sentence. He appealed, assigning as error the denial of his motion to suppress.

Charles James Menne, Jr. denied any complicity in the murder of his acquaintance, Wesley Morgan, when he was first questioned by police. Two months later he became an object of sharpened interest to officers investigating the murder when they learned that Menne had at one time owned the murder weapon, a handgun found in the victim's car. An officer telephoned Menne and asked him to come to the police station for questioning about the weapon. Menne agreed and was brought to the stationhouse by a police squad car. At the station he was taken directly to an interrogation room on the second floor where he met Lieutenant Thibodeaux and Lieutenant Pelot. These investigating officers testified that Menne was not advised of his constitutional rights before the interrogation began. The record also indicates that Menne was never informed that he was not under arrest or that he was not obliged to remain at the stationhouse or submit to questioning.

The evidence is sketchy as to the first part of the interrogation. Lieutenant Pelot asked Menne from whom he had obtained the weapon, what he had done

with it, and when he had last seen the victim. The evidence before us does not reveal Menne's specific answers, but he evidently admitted that he once owned or possessed the weapon because the officers testified that he claimed to have sold it to the murder victim, Wesley Morgan. After Menne had been under interrogation for about one hour, Lieutenant Thibodeaux told Menne that they did not believe he was being truthful with them because their investigation indicated he was the last person with the weapon before Wesley Morgan's death and therefore must know more about the murder than he had divulged. At that time Menne said "You got me, I killed him." Lieutenant Thibodeaux testified that he thought Menne was joking and replied, "Well, tell me something about the murder." In response, Menne told them how he had wrecked Wesley Morgan's car after the murder by running into a railroad crossing pole. Since this information was not contained in any of the news reports concerning the case, Lieutenant Thibodeaux concluded that Menne definitely was the murderer. At this point, Menne was for the first time advised of his constitutional rights. Afterwards, the officers took his fully detailed confession and reduced it to writing.

Menne argues that the trial court's ruling must be reversed and his confessions suppressed because they were obtained through police interrogation without prior advice of his right to counsel and his right to remain silent in violation of the Fifth and Sixth Amendments, as expounded in *Miranda v. Arizona*, 384 U.S. 436,

86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), as well as Article 1, §13 of the 1974 Louisiana Constitution. The prosecution contends, on the other hand, that the officers were under no obligation to give Menne the warnings sooner than they did because, as was made clear in *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977), Menne was not in custody during the early stages of his interrogation. The issue, therefore, is whether under the circumstances of this case, the police officers failed to timely perform their duty of advising the defendant of his constitutional rights.

In explication of the basic rights to the assistance of counsel and the freedom from self-incrimination, the Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at 706. By "custodial interrogation," the *Miranda* court meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at 706. See *Beckwith v. United States*, 425 U.S. 341, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976); *Orozco v. Texas*, 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 34 (1969); *Mathis v. United States*, 391 U.S. 1, 88 S.Ct. 1503, 20

L.Ed.2d 381 (1968). Thus, it is clear that the constitutional warnings are required in "situations falling short of a formal placing in arrest . . . in which the accused may be said to be under custody or significant restraint." *State v. Roach*, 322 So.2d 222, 227 (La. 1975).

No less is required by Article I, §13 of the 1974 Louisiana Constitution. By providing that a person "arrested or detained in connection with the investigation" of an offense must be fully advised of his rights, the framers intended to require that investigating officers give the warnings anytime such a citizen was deprived of his liberty in a significant way or was not free to go as he pleased. *State in the Interest of Dino*, 359 So.2d 586 (La. 1978); *State v. Segers*, 355 So.2d 238 (La. 1978); *State v. Welch*, 337 So.2d 1114 (La. 1976); *State of Louisiana Constitutional Convention of 1973 Verbatim Transcripts, September 7, 1973, Vol. XIV*, pp. 45-48; Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*. 35 La. L. Rev. 1, 40-48 (1974).

Whether a person has been taken into custody, detained or deprived of his freedom of action in a significant way must be decided by an objective test. Any formulation making the need for *Miranda* warnings depend upon how each individual being questioned perceived his situation would require a prescience neither the police nor any one else possesses. On the other hand, a standard hinging on the inner intentions of the police would fail to recognize *Miranda's* concern with the coercive effect of the "atmosphere" from the point

of view of the person being questioned. *United States v. Hall*, 421 F.2d 540 (2d Cir. 1969); *State v. Roach*, 322 So.2d 222 (La. 1975); *State v. Corey*, 339 So.2d 804 (La. 1976).

Viewing the evidence objectively, from the standpoint of a reasonable interogee, we conclude that Menne was deprived of his freedom of action in a significant way at least from the time the two officers informed him, following an hour's interrogation, that he was the last person with the murder weapon before the victim's death and that they believed he knew more about the crime than he had revealed. By this time Menne, who knew that all other previous owners of the gun had been eliminated as suspects, would have been rash indeed to suppose that he was free to leave the second floor interrogation room if he pleased. Indeed, so far as the record discloses, Menne was never informed that he was not under arrest. A request to appear at a police station may easily carry an implication of obligation, while the appearance itself, unless clearly stated to be voluntary, may be an awesome experience for the ordinary citizen. See *ALI, A Model Code of Pre-Arraignment Procedures*, §110.1(5) *Commentary*; see also §120.5. The circumstances in this case dictate a finding that even without any physical restraint or express declaration that he was under arrest Menne necessarily and reasonably must have understood that he was under compulsion to remain and submit to questioning. Cf. *State v. Sherer*, 354 So.2d 1038 (La. 1978); see *Seals v. United States*, 325 F.2d 1006 (D.C. Cir.

1963); *People v. White*, 69 Cal.2d 751, 72 Cal. Rptr. 873, 446 P.2d 993 (1968); *People v. Arnold*, 66 Cal.2d 438, 58 Cal. Rptr. 115, 426 P.2d 515 (1967). The practical significance of the safeguards provided for custodial or detentional interrogations would be greatly undermined if it were open to the police to contend that none of those safeguards applied since the accused had appeared and remained at the police station voluntarily, although the accused reasonably may have thought that he was under constraint. See *ALI, A Model Code of Pre-Arraignment Procedures Commentary*, §120.5.

The prosecution's arguments reduce the problem to a false simplicity by ignoring complicating factors.

First, the state's brief describes the case as one in which events had not focused any suspicion on Menne or given him any reason to suppose that he was under constraint before he "blurted out" a confession. This argument is, of course, based upon a clearly erroneous view of the evidence.

Next, the state declares defendant's assignment of error to be without merit, citing *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977), without further explanation, as if the case were on all fours with the present one. Mathiason represents, however, a determination by the Supreme Court that under the particular facts there, which are distinguishable from those in the present case, a person questioned by a

police officer had not been taken into custody or otherwise deprived of his freedom in any significant way. The high court took its facts from the Oregon Supreme Court opinion as follows:

> " 'An officer of the State Police investigated a theft at a residence near Pendleton. He asked the lady of the house which had been burglarized if she suspected anyone. She replied that the defendant was the only one she could think of. The defendant was a parolee and a "close associate" of her son. The officer tried to contact defendant on three or four occasions with no success. Finally, about 25 days after the burglary, the officer left his card at defendant's apartment with a note asking him to call because "I'd like to discuss something with you." The next afternoon the defendant did call. The officer asked where it would be convenient to meet. The defendant had no preference; so the officer asked if the defendant could meet him at the state patrol office in about an hour and a half, about 5:00 p.m. The patrol office was about two blocks from defendant's apartment. The building housed several state agencies.
>
> " 'The officer met defendant in the hallway, shook hands and took him into an office. *The defendant was told he was not under arrest.* The door was closed. The two sat across a desk.

The police radio in another room could be heard. The officer told defendant he wanted to talk to him about a burglary and that his truthfulness would possibly be considered by the district attorney or judge. The officer further advised that the police believed defendant was involved in the burglary and [falsely stated that] defendant's fingerprints were found at the scene. The defendant sat for a few minutes and then said he had taken the property. *This occurred within five minutes after defendant had come to the office.* The officer then advised defendant of his Miranda rights and took a taped confession.

" '*At the end of the taped conversation the officer told defendant he was not arresting him at this time; he was released to go about his job and return to his family.* The officer said he was referring the case to the district attorney for him to determine whether criminal charges would be brought. It was 5:30 p.m. when the defendant left the office.

" 'The officer gave all the testimony relevant to this issue. The defendant did not take the stand either at the hearing on the motion to suppress or at the trial.' " [emphasis added] 429 U.S. at 493-94, 97 S.Ct. at 713, 50 L.Ed.2d at 718.

From the moment Mathiason entered the policeman's office his case differed markedly from the one at bar. He was confronted by a lone officer in an office, rather than two policemen in a second floor interrogation room. He "was immediately informed that he was not under arrest," 429 U.S. at 495, instead of being kept uninformed of his status during extensive interrogation. He confessed "within five minutes after [he] had come into the office," rather than after an hour's interrogation by two policemen. 429 U.S. at 493. At the close of a one-half hour interview Mathiason left the office without hindrance, as opposed to being arrested and incarcerated immediately following his interrogation. 429 U.S. at 495. The Supreme Court concluded that it was "clear from these facts that Mathiason was not in custody or otherwise deprived of his freedom of action in any significant way." 429 U.S. at 495, 97 S.Ct. at 714, 50 L.Ed.2d at 719. It is equally clear from the facts in the present case that Menne, who was not informed that he was under no compulsion to appear or remain at the police station, was led to believe, as a reasonable person, that he was not at liberty at least from the time the officers informed him they did not believe his story because he had been the last person with the murder weapon before it was found in the victim's car.

Furthermore, as we made clear in *State in the Interest of Dino, supra,* 359 So.2d 586 at 590, even if *Mathiason* were on all fours with the present case, "its holding clearly does not govern our interpretation of Article 1, §13 of

the 1974 Louisiana Constitution whose framers intended to adopt the *Miranda* edicts full-blown and unfettered." As we further stated in *Dino:*

> "* * * [I]t appears that, in fact, there was an intention by the convention to go beyond *Miranda* and to require more of the State regarding the precise issue now under discussion. In Article I, §13 the cautions are triggered and must be given 'when any person has been arrested or detained in connection with the investigation or commission of any offense.' The use of 'detained' in addition to 'arrested' was intended to prevent a narrow construction of the latter term." 359 So.2d at 592.

We conclude that Menne clearly was detained or had his freedom deprived in a significant way at least from the time the officers questioned his credibility and indicated he was a primary suspect. Under these circumstances, the warnings were required and the prosecution should not have been permitted to use the statements obtained from defendant without procedural safeguards effective to secure his privilege against self-incrimination.

For the reasons assigned, the defendant's conviction and sentence are set aside, the defendant's motion to suppress his confessions is granted, and the case is remanded for further proceedings.

REVERSED AND REMANDED.

* * *

/s/ JLD
/s/ JW
/s/ PFC
/s/ JNS, Ad Hoc

Summers, C.J., dissents.

Marcus, J., dissents and assigns reasons.

Blanche, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

(Number and Title Omitted)

MARCUS, Justice (dissenting)

In *Oregon v. Mathiason*, 429 U.S. 492 (1977), the United States Supreme Court stated that

> police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning

> takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.

I do not consider that there had been such a restriction on defendant's freedom in this case as to render him "in custody." Accordingly, I respectfully dissent.

SUPREME COURT OF LOUISIANA

(Number and Title Omitted)

BLANCHE, Justice (dissenting)

Persons not under an in-custody investigation are not entitled to a *Miranda* warning. Neither are persons who volunteer statements at a time when a criminal investigation has not focused on them. This opinion would require police to give *Miranda* warnings to everyone whom they merely question.

* * *

REHEARING DENIED

Dated: Mar. 3, 1980